IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 575 OF 2005

1. Milind Rambhau Bharambe.
   Age: 34 years, Occ.: Service,
   Superintendent of Police,
   Sangli.

2. Amarnath Dattatray Ingale,
   Age 57 years, Occ.: Service,
   Dy.Superintendent of Police,
   (Home), Satara.

3. Vijaykumar Vasantrao Palsule,
   Age: 40 years, Occ: Service,
   (P.I., A.C.B., Pune)
   R/o. Flat No.11, Durga Apartment,
   Shree Mahalami Nagar, Bibwewadi,
   Pune-37. ... Petitioners.
   (Org.Accused)

Versus.

1. Suryaji Ramchandra Salunkhe,
   Age: 55 years, R/o. 9/548,
   Ichalkaranji, Dist.Kolhapur. ... Respondents
   (No.1-Original
2. The State of Maharashtra. Complainant.)

Shri S.V.Marwadi with Shri Niranjan Mundargi for the Petitioners.

Shri Niteen Pradhan with Miss S.D.Khot for the Respondent No.1.

Shri A.S.Shitole, A.P.P. for the Respondent No.2-State.

CORAM : ABHAY S.OKA, J.

DATED : 21st September, 2006.

ORAL JUDGMENT.

1. By this writ petition under Article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as

"the Code of 1973)"), a prayer is made for quashing the proceedings of the Regular Criminal Case No.136 of 2000 pending before the learned Judicial Magistrate First Class, Ichhalkaranji. The Petitioners are arraigned as Accused in a case where process has been issued against them for offence punishable under sections 323, 324, 504, 506 read with section 34 of the Indian Penal Code. A Revision Application was filed by the Petitioners before the Sessions Court for challenging the order issuing process. The said Revision Application has been rejected by the learned Sessions Judge, Kolhapur. The 1st Petitioner at present is the Superintendent of Police, Sangli. The 2nd Petitioner at present is the Deputy Superintendent of Police (Home), Satara and the 3rd Petitioner at present is the Police Inspector, A.C.B., Pune. The learned Judicial Magistrate First Class while issuing the process held that the sanction as contemplated by section 197 of the said Code of 1973 is not necessary.

2. On 18th August 2000, there was a meeting held of the Powerloom workers at Ichhalkaranji. The meeting was followed by a public meeting. One Bajarang Dadasaheb Lonari and other powerloom workers including the 1st Respondent herein were present in the said meeting. The Petitioners who were at the relevant time posted at

Ichhalkaranji were also present at the spot for bandobast duty. According to the prosecution case after the meeting of the workers was over, the said Bajrang and other workers were called by the Police at Ichhalkaranji Police Station. One Sambhaji Vasant Awale lodged FIR against the first Respondent, the said Bajarang Lonari and six others alleging commission of offence under sections 143, 147 and 295 of the Indian Penal Code. The allegation in the said FIR is that on 18th August 2000 at 6.30 p.m. the said persons formed unlawful assembly near the statue of late Annabhau Sathe. The further allegation against them was that they were members of unlawful assembly in prosecution of their common object of causing hurt to religious feelings of a particular Community. Lastly it was alleged that in the prosecution of their common object, they garlanded the statue after tearing the cloth covering the statue and at that time, they were wearing shoes and footwear. By Judgment and order dated 26th December 2003, the learned Judicial Magistrate First Class, Ichhalkaranji acquitted the first Respondent and others.

3. The allegation of the first Respondent and seven others is that they were beaten and manhandled at the Police Station. The said Bajrang Lonari submitted an

application to the Judicial Magistrate, Ichhalkaranji making a complaint about the said incident. Shri Madan Murgude, Shri Shantaram Gotad and three others also submitted their complaints/applications to the Judicial Magistrate First Class at Ichhalkaranji.

4. The complaint filed by the said Bajrang Lonari records that after the public meeting was over, he came to his residence at 8.00 p.m. At that time a Police Constable came to his residence and the Police personnel informed him that the Petitioner No.2 had called him to the Police Station. The Police represented that some goondas were after the said Bajrang and therefore, for giving protection, the said Police personnel were deputed. His allegation is that after he was taken in a police vehicle to the Gavbhag Police Station, the Petitioners Nos.2 and 3 and other Policemen started assaulting him by sticks, by fist blows and kicks. They also started abusing the said Bajrang. As a result of the assault he collapsed. After sometime the said Bajrang found that he was in police lock up. At that time Petitioner No.3 came there and started giving blows by fists on his abdomen and on the chest. The said Bajrang was again assaulted which resulted in serious injuries. Thereafter some other workers were also brought to the lock up and they were also assaulted.

Late in the night they were taken for medical examination. While they were being taken for medical examination, Police Constables assaulted them by sticks. In the complaints which were filed by Madan Murgude and others, similar grievances were made. It appears that on 21st August 2000 the Complainants were produced before the learned Judicial Magistrate when they complained of ill-treatment at the hands of the Police. The learned Judicial Magistrate directed that the accused persons should be sent to the Medical Officer, Dr.Babasaheb Ambedkar Hospital, Ichhalkaranji for examination. The Investigating Officer was directed to produce the arrest panchanama of the Accused persons. The order dated 21st August 2000 also notes that separate applications/complaints were filed by the accused persons. On 25th August 2000, Bajrang Lonari was examined by the Medical Officer of Dr.Babasaheb Ambedkar Hospital. The Medical Officer noted large number of injuries on the person of the said Bajrang. Similarly the said Shantaram Gotad was also examined on the same day by the Medical Officer of Dr.Babasaheb Hospital and number of injuries were noted on his person. The other persons including the first Respondent who had made complaints about ill-treatment at the hands of the Petitioners were also examined by the Medical Officer of the said Hospital on 25th August

2000 and the injuries on their person were noted. The learned Judicial Magistrate, First class, Ichhalkaranji by impugned order dated 11th June 2001, issued process against the Petitioners for offences under sections 323, 324, 504, 506 read with section 34 of the Penal Code. The learned Judge noted that as the alleged incident was not a part of the duty of accused, sanction under section 197 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code of 1973) was not necessary.

5. Shri Marwardi, the learned Counsel appearing for the Petitioners submitted that the sanction under section 197 of the said Code of 1973 was mandatory and the order issuing process is vitiated for want of sanction. He submitted that on the basis of the complaint on which the order of process is issued, a show cause notice was issued by the learned Judicial Magistrate First Class and on the same complaint the learned Judge has issued process thereby committing gross illegality. He submitted that the F.I.R. was registered under C.R.No.48/2000 against all the Complainants about the incident which took place in the meeting held on 18th August 2000. The allegation against the said injured persons was that the said persons defaced the statue of late Annabhau Sathe

thereby hurting the religious feelings of a particular community. Shri Marwadi pointed out that the said F.I.R. itself recorded that the Complainants were assaulted by the mob. He invited my attention to the panchanama made on 18th August 2000 of arrest of the said complainants. He pointed that the said panchanama recorded on 18th August 2000 itself shows that the injuries were sustained by the said persons were as a result of the assault by the members of the mob on 18th August 2000 and therefore, the allegations made by them are absolutely baseless. He has relied upon several decisions for showing that sanction under section 197 of the said Code of 1973 was mandatory.

6. Shri Pradhan appearing for the original Complainant i.e.Respondent No.1 pointed out that the arrest panchanama which was relied upon by Shri Marwadi was never produced and proved in the trial held against the Complainants which has resulted in their acquittal. He invited my attention to the judgment of the learned Magistrate which recorded the acquittal of the Complainants in this case.

7. I have carefully considered the submissions. After the grievance was made by the Complainants before the learned Magistrate as regards the assault against

them at the Police Station, all of them were sent for medical examination. The medical reports prima-facie support their case. There is sufficient material to proceed against the Petitioners. The contention of Shri Marwadi was that all of them suffered injuries at the hands of the mob in the incident which took place on 18th August 2000. He relied upon the panchanama dated 18th August 2000 which records the injuries on the said persons. The said panchanama was prepared in the case of F.I.R which was registered against these Complainants on 18th August 2000. The case against the Complainants on the basis of the said F.I.R has resulted in acquittal. A perusal of the judgment of the learned Magistrate in the said case shows that there is no reference to the said panchanama relied upon by Shri Marwadi. He could not place any material on record to show that the said Panchanama was produced and proved in the said case. Therefore, at this stage when the learned Magistrate has issued process, it is difficult to place reliance on a panchanama which has not seen the light of the day in the trial in which it ought to have been proved.

8. So far as the issue of sanction is concerned, Shri Marwadi has relied upon a decision of the Supreme Court in the case of Sankaran Moitra v/s. Sadhna Das

and Another [(2006) 4 S.C.C. 584] as well as some other decisions which are referred to in the said case. He placed reliance on the majority view expressed by the Supreme Court. The Apex Court in the said decision has considered its earlier decisions on the subject. In paragraph 25 the Apex Court held thus:

> "25. The High Court has stated that killing of a person by use of excessive force could never be performance o duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decision of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to

> dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under section 197(1) of the Code of Criminal Procedure."

The Apex Court was dealing with a case where the allegation against a Police Constable was that he had killed the husband of the complainant. In the said case there was a fight between two groups. The Police tried to separate two groups. In the present case the specific allegation is that the Complainants were taken to the Police Station and were assaulted. The allegation is that they were unauthorisedly taken to the Police Station under the garb of giving them protection.

It is difficult to say at this stage that the act complained of was directly connected with the official duties of the Petitioners. Moreover the defence of the Petitioners is of complete denial and according to them the Complainants sustained injuries in the incident of 18th August 2000. Therefore, it cannot be said at this stage that the act the is directly concerned with the official duties of the Petitioners. The Privy Council in the case of H.H.B.Gill v/s. The King (AIR (35) 1948 P.C. 126) has observed:

> "A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty."

In the case of Matajog Dobey v/s. H.C.Bhari (AIR 1956 S.C. 44), the Apex Court in paragraph 17 held:

> . "The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under S.197, unless the act complained of is an offence, the only point to determine is whether it was committed in the discharge

of official duty. **There must be a reasonable connection between the act and the official duty.** It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits.

. **What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation."**

(Emphasis supplied).

The Apex Court concluded in paragraph 20 that :

. "It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the

trial, may establish the necessity for sanction.

. **Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."** (Emphasis supplied).

At this stage it cannot be said that there is a reasonable connection between the act and the discharge of official duty. Therefore, no fault can be found with the view taken on the requirement of sanction, at the stage of issuing process.

9. Hence no case is made out for interference with the order issuing process. The petition is rejected.

Judge.